

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, v. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NO. FCU-02-16 (C-02-164)
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND NOTICE OF HEARING**

(Issued September 3, 2002)

On April 19, 2002, Mr. Bill Miller filed a written complaint with the Utilities Board (Board) regarding his long distance telephone service pursuant to Iowa Code § 476.103 (2001). In his complaint, Mr. Miller stated AT&T Communications of the Midwest, Inc. (AT&T) had changed his long distance telephone service from MCI to AT&T without his approval.

The details of the complaint are contained in informal complaint file number C-02-164, which is incorporated into the record in this case.

Upon receiving the complaint, Board staff attempted to informally resolve the dispute. Board staff forwarded the complaint letter to AT&T for response.

On May 13, 2002, AT&T responded, stating it had not slammed the customer. AT&T provided a recording of a third-party verification it alleged showed the authorization for the change in service. AT&T further stated that a telemarketer called the Miller residence on November 29, 2001, an order was processed, the transaction was verified, and AT&T service was connected on December 2, 2001. AT&T service was subsequently terminated on February 6, 2002.

The recording provided by AT&T indicated that the person contacted at the Miller residence was Ms. Janice Bennett. Ms. Bennett is the fiancée of Mr. Miller. On the recording, the third-party verifier asked Ms. Bennett: "Are you authorized by the billing party to make carrier changes or charge service to the account?"

On July 13, 2002, Board staff issued a proposed resolution stating that the verification recording reveals that Ms. Bennett thought Mr. Miller's account was already with AT&T; that is, that she was authorizing continuation of service, rather than a change of long distance service. Board staff concluded that the customer had not consented to the change and AT&T had slammed the account. The proposed resolution directed AT&T to credit the customer's account for the full amount in dispute and informed the parties of their right to appeal.

On July 17, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request for formal complaint proceedings, asking the Board to consider the propriety of imposing a civil penalty pursuant to Iowa Code § 476.103(4)(a), and to consider the factors identified in Iowa Code § 476.103(4)(b) as a possible basis for compromising a civil penalty, if imposed. The Consumer Advocate stated the verification was invalid, and argued there is a

material difference between authorization to make changes to the account and authorization to charge service to the account. The Consumer Advocate further stated these problems appear to require remedial action. Therefore, the Consumer Advocate requested that the Board docket the case as a formal proceeding, giving the parties such additional notice and opportunity for hearing as is appropriate, evaluating the need for remedial action, considering the appropriateness of a civil monetary penalty, and such other purposes as may be necessary to bring the matter to a proper resolution.

AT&T has not responded as of the date of this order.

The Board issued an order dated August 19, 2002, granting the Consumer Advocate's request, docketing the complaint, and assigning the case to the undersigned administrative law judge for such further proceedings as may be appropriate.

Pursuant to Iowa Code § 476.3(1) and 199 IAC 6.5, a procedural schedule will be established and a hearing regarding this complaint will be held, if needed.

The statutes and rules involved in this case include Iowa Code §§ 476.3, 476.33, 476.103, and Board rules at 199 IAC 1.8, 22.23, and Chapters 6 and 7.

The issues

The issues in this case generally involve the change of Mr. Miller's long distance telephone carrier from MCI to AT&T, whether AT&T complied with state and federal law when it changed Mr. Miller's long distance telephone service, and what should be done to resolve the case, including whether remedial action and/or civil

penalties are appropriate. Other issues may be raised by the parties prior to and during the hearing.

According to Iowa Code § 476.103(4) and 199 IAC 22.23(5), a civil penalty may only be imposed after notice and an opportunity for hearing. This order constitutes such notice that a civil penalty may be imposed after hearing, if it is found that AT&T violated a statute or rule of the Board, and if the circumstances warrant such imposition.

Prepared testimony and exhibits

All parties will have the opportunity to respond and present evidence and argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8).

The submission of prepared evidence prior to hearing helps identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined concerning the statements already made in writing. The use of prepared testimony and submission of documentary evidence ahead of the hearing prevents surprise at the hearing and helps each party to prepare adequately so that a full and true

disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3). This procedure also tends to shorten the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

Party status

The Consumer Advocate and AT&T are currently the parties to this proceeding. If Mr. Miller wishes to be a party in the case, he must notify the Board in writing in accordance with the procedural schedule established in this order.

Each party must file an appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. The written appearance should substantially conform to 199 IAC 2.2(15). It should include the docket number of this case as stated in the caption above. Appearances should be filed at the earliest practical time with the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319. The appearance should be accompanied by a certificate of service that conforms to 199 IAC 2.2(16) and verifies that a copy of the document was served upon the other parties.

Any party who communicates with the Board should send an original and ten copies of the communication to the Executive Secretary at the address above, accompanied by a certificate of service. One copy of that communication should also be sent at the same time to each of the other parties to this proceeding. These requirements apply, for example, to the filing of an appearance or to the filing of prepared testimony and exhibits with the Board.

Pursuant to 199 IAC 6.7 and the Board Order issued August 19, 2002, the written complaint and all supplemental information from the informal complaint

proceedings, identified as Docket No. C-02-164, are part of the record of this formal complaint proceeding.

The materials that have been filed in this docket are available for inspection at the Board Records Center, 350 Maple Street, Des Moines, Iowa 50319. Copies may be obtained by calling the Records Center at (515) 281-5563. There will be a charge to cover the cost of the copying.

All parties should examine Iowa Code §§ 476.3, 476.33, 476.103, and Board rules at 199 IAC 1.8 and 22.23, and Chapters 6 and 7, for substantive and procedural rules that apply to this case.

Stipulation of Facts and Prehearing Brief

The facts underlying this case have already been the subject of an informal complaint proceeding. Therefore, it is appropriate that the parties file a stipulation of facts, so that only facts in dispute need be resolved in this formal complaint proceeding. In addition, it is appropriate that the parties file prehearing briefs that identify and discuss their respective positions. Finally, the parties must discuss with each other whether it is possible to settle this case without further formal proceedings and the involvement of the undersigned administrative law judge.

IT IS THEREFORE ORDERED:

1. If the parties are unable to settle this case, on or before September 24, 2002, the parties must file a document stipulating to as many of the facts in this case as possible. The stipulation must also identify which facts remain in dispute and need to be resolved. The parties must also state whether they believe a hearing is

necessary in this case, or whether the case could be submitted on the stipulated facts, prefiled testimony and evidence, and the prehearing briefs. If Mr. Miller wishes to become a party in this case, he must file written notice with the Board no later than September 12, 2002, and must join in the stipulation of the parties.

2. If the parties are unable to stipulate to all of the facts in this case, prefiled testimony and exhibits must be filed only with respect to the facts which remain in dispute and need to be resolved in this proceeding.

3. If needed pursuant to paragraph two, on or before October 8, 2002, the Consumer Advocate and any intervenors must file prepared direct testimony and exhibits, and a prehearing brief. The prepared direct testimony may refer to any document already in the record, and parties do not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In prepared testimony and exhibits, the Consumer Advocate and any intervenors must address the issues discussed above, and file any other evidence not previously filed. In its prehearing brief, the Consumer Advocate must state what remedial or other actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable statutes and rules.

4. If needed pursuant to paragraph two, on or before October 22, 2002, AT&T must file prepared rebuttal testimony and exhibits, and a prehearing brief responding to the Consumer Advocate's brief. AT&T may refer to any document already in the record, and does not need to refile exhibits already submitted in the informal complaint process and made a part of the record. In its prepared testimony

and exhibits, AT&T must address the issues discussed above, the facts and argument raised by the Consumer Advocate in its request for a formal complaint proceeding, and file any other evidence not previously filed.

In its prehearing brief, AT&T must state what remedial or other actions it believes would be necessary to bring this matter to a proper resolution, and why such actions would be appropriate and in accordance with applicable statutes and rules.

5. If the Consumer Advocate or any intervenor is going to file prepared rebuttal testimony and exhibits, it must do so by November 5, 2002.

6. If a hearing is necessary pursuant to paragraph one, a hearing for the presentation of evidence and the cross-examination of witnesses will be held in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa, on November 12, 2002, beginning at 1:30 p.m. The parties should plan to come to the hearing room at 1:15 p.m. to mark exhibits. Each party should provide an index to the exhibits it has filed prior to the hearing, and to those exhibits it plans to file at hearing, if any. Each party must provide a copy of its prepared testimony to the court reporter. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

7. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of these proceedings. Pursuant to 199 IAC 7.2(6), the party making reference to the data request must file one original and three copies of the data request and

response with the Executive Secretary of the Utilities Board at the earliest possible time.

8. Any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.2(7). The person must file a petition to intervene on or before 20 days following the date of issuance of this order, unless the petitioner has good cause for the late intervention. 199 IAC 7.2(8).

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 3rd day of September, 2002.